



**Rules and Ancillary Document Review Checklist**  
(This form must be filled out electronically.)

All responses should be in **bold** format.

Document Reviewed (include title):

- **WAC 458-20-122—Sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use;**
- **WAC 458-20-161—Persons buying or producing wheat, oats, dry peas, corn, barley, dry beans, lentils and triticale and making sales thereof;**
- **WAC 458-20-209—Farming for hire and horticultural services performed for farmers;**
- **WAC 458-20-210—Sales of agricultural products by farmers; and**
- **WAC 458-20-234—Business tax on flour millers, manufacturers of soybean or sunflower oil.**

Date last adopted:

- **Rules 122, 209, & 210—March 10, 1994**
- **Rule 161—March 15, 1983**
- **Rule 234—March 30, 1983**

Reviewer: **Alan R. Lynn**

Date review completed: **May 30, 2000**

Is this document being reviewed at this time because of a taxpayer or business association request? (If “YES”, provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request). **YES** ☐ **NO** ☒

Type an “x” in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

**1. Explain the goal(s) and purpose(s) of the document:**

**Rule 122 explains the application of Washington’s B&O and retail sales taxes to sales of feed, seed, fertilizer, spray materials, and other tangible personal property for farm use. It also provides a sample exemption certificate to be used to document the sales tax exemption provided by RCW 82.08.0259 for sales of purebred livestock used for breeding purposes.**

**Rule 161 explains the application of Washington’s B&O tax to persons selling wheat, oats, dry peas, corn, barley, dry beans, lentils, and triticale, including the circumstances under which the lower B&O tax rate previously provided by RCW 82.04.260 applied.**

**Rule 209 provides tax-reporting information to persons performing horticultural services for farmers.**

**Rule 210 explains the application of the B&O and retail sales taxes to sales of agricultural products by farmers.**



**Rule 234 explains the B&O tax reporting requirements of persons manufacturing wheat into flour, soybeans into soybean oil, or sunflower seeds into sunflower oil.**

**2. Need:**

YES	NO	
<b>122 209 210</b>	<b>161 234</b>	Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
<b>161 234</b>		Is the document obsolete to a degree that the information it provides is of so little value that the document warrants repeal or revision?
<b>161 234</b>		Have the laws changed so that the document should be revised or repealed? (If the response is “yes” that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)
<b>122 209 210</b>	<b>161 234</b>	Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington’s citizens? (If the response is “no”, the recommendation must be to repeal the document.)

Please explain.

**Rules 122, 209, and 210 provide useful tax-reporting information that reduces the need for taxpayers or Department personnel to research multiple documents to determine the appropriate tax liability of farmers or persons performing services for farmers.**

**Rules 161 & 234 are both out-of-date and do not reflect subsequent changes in law. For example:**

- The lower B&O tax rate discussed in Rule 161 no longer exists. Sales of products previously subject to this tax rate are now exempt (chapter 312, Laws of 1998). Even the list of the products is incomplete as it does not include rye and canola.
- The list of products that qualify for the lower B&O tax rate discussed in Rule 234 is also incomplete. Subsequent legislation added canola and barley products.
- Rule 234 provides incorrect tax-reporting instructions to persons who manufacture and sell products in Washington. The rule fails to address or identify the Multiple Activities Tax Credit reporting requirements of RCW 82.04.440 (addressed in Rule 19301).
- Rule 234 lists an incorrect statutory cite and an incorrect tax rate.

**Chapter 40, Laws of 200, provides a retail sales/use tax exemption for certain equipment, certain services rendered in respect to constructing or improving structures or eligible equipment, and component parts of eligible equipment or structures when the equipment or structures used in a manner to reduce field burning. A B&O tax credit is also provided. While there is no established need to address this legislation in a rule, the Department may want to consider addressing it in a future revision of Rule 122 or in a new rule.**



**3. Related ancillary documents, court decisions, BTA decisions, and WTDs:** Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an ancillary document. Excise Tax Advisories (ETAs), Property Tax Bulletins (PTBs) and Audit Directives (ADs) are considered ancillary documents.

(a)

YES	NO	
X		Are there any ancillary documents that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any ancillary documents that should be repealed because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this ancillary document be incorporated into a rule?
		Are there any Board of Tax Appeal (BTA) decisions, court decisions, or Attorney Generals Opinions (AGOs) that affects the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is “yes” to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

**The following documents should be retained at this time, but the information should be incorporated into the appropriate rule when that rule is next revised.**

- **Rule 122:**
  - **ETA 173.04.103—Seed furnished under grower contracts.** This document explains that the transfer of the possession of seed by a seed company to a farmer/grower is a wholesale sale;
  - **ETA 237.08.125—Sales tax exemption for sales of cattle and milk cows.** This document explains that the exemption for sales of cattle and milk cows used on the farm does not apply to sales of sheep, goats, and hogs; and
  - **ETA 406.08.125—Sales of quarter horses.** This document explains that quarter horses qualify as purebred livestock for the purposes of the exemption provided by RCW 82.08.0259.
- **Rule 210:**



- **ETA 190.04.210—Feeding and fattening cattle and the agricultural products exemption.** This document clarifies when a person buying livestock to feed and fatten before resale is considered a farmer.

The following documents can simply be repealed:

- **ETA 381.04.161—Wholesale sales of rye and milo.** This document explains that the lower B&O tax rate provided by then RCW 82.04.260(1) does not apply to sales of rye and milo. Subsequent legislation now provides a B&O tax exemption for the products previously identified in RCW 82.04.260(1); and
- **AD 8122.1—Feed purchased by cattle auction businesses.** This document explains that charges for feeding cattle temporarily being held in a stockyard or at a cattle auction are subject to the service B&O tax, and separate charges for the feed are subject to the wholesaling B&O tax if sold to farmers.

**4. Clarity and Effectiveness:**

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities, help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do any administrative changes within the Department warrant repealing or revising this document?

Please explain.

**Rules 122, 209, and 210 are clear, concise, and achieve the results they were originally designed to achieve. While there is no need to revise the rules at this time, the Department should consider the following when these rules are next revised:**

- **A previous review of ETA 367.04.172 (Clearing land and moving earth for commercial farmers) recommended that the information be addressed in a revised WAC 458-20-172. The Department may also want to consider incorporating some guidance in this area into Rule 209 when that rule is next revised.**
- **Rule 122 provides a list of sales for which retail sales tax exemptions are provided. When next revising this rule it should also be noted that the law also provides complimentary use tax exemptions.**
- **Rules 122, 209, and 210 identify changes resulting from 1993 legislation. This information can be eliminated as the changes occurred outside the statutory non-claim period provided by RCW 82.32.050. Rule 122's reference to WAC 458-20-161 should be eliminated if that rule is repealed.**



Rules 161 and 234 are not providing the results they were originally designed to achieve. The information is out of date and in the case of Rule 161 incorrect. The pertinent statutes provide sufficient information.

**5. Intent and Statutory Authority:**

YES	NO	
X		Does the Department have sufficient authority <b>to adopt</b> this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statutes that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed <b>to implement</b> ?) If “no”, identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statutes being implemented by this document?

Please explain.

**RCW 82.32.300** authorizes the Department to adopt and publish rules to explain the provisions of the Revenue Act.

While there is no “need” to introduce the following legislative suggestions, the Department should nonetheless consider introducing legislation in the following areas:

- **Taxability of inputs (e.g., seed, fertilizer, and spray materials)**—The law currently excludes persons using agricultural products in a manufacturing process from the statutory definition of “farmer.” As a result, growers who subsequently use these products in a manufacturing process are not only excluded from the B&O tax exemption provided for wholesale sales made by farmers, but also cannot purchase inputs at wholesale.

Legislation to allow all persons growing or producing agricultural products for sale to purchase inputs at wholesale whether or not they subsequently use the products in a manufacturing process should be considered. This will recognize that the cultivation of agricultural products is a farming activity, and eliminate the need for a grower/manufacturer to separately place his or her cultivation and manufacturing operations into separate organizations/legal entities solely for the purpose of being able to purchase inputs at wholesale. The reviewer is aware that some legislators have expressed an interest for legislation in this area.

- **Custom feedlot operations**—The 1985 Legislature revised RCW 82.04.330 to extend the B&O tax exemption available to farmers to persons raising animals, birds, etc. owned by others, such as custom feedlot operators. The 1993 revisions to RCW 82.04.330 eliminated the pertinent statutory language. This appears to be an oversight.
- **Litter tax**—RCW 82.19.050 provides a litter tax exemption for the sale of any animal, bird, insect, . . . by a person performing only the growing or raising function for that animal, bird, or insect. This language mirrors some of the previous statutory language related to farmers, but was not updated to reflect 1993 legislative changes in this area. This language should be updated and perhaps expanded to include persons growing and



**selling horticultural products.**

**6. Coordination:** Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	<b>X</b>	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?

Please explain.

**The Department is solely responsible for administering the business and occupation (B&O), retail sales, and use taxes in these areas.**

**7. Cost:** When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	<b>X</b>	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain. **These are interpretive rules that impose no new or additional administrative burdens on taxpayers that are not imposed by law.**

**8. Fairness:** When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
<b>X</b>		Does the document result in equitable treatment of those required to comply with it?
	<b>X</b>	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	<b>X</b>	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.



**9. LISTING OF DOCUMENTS REVIEWED:** (Use “bullets” with any lists, and include documents discussed above. Citations to statutes, ancillary documents, and similar documents should include titles. Citations to Attorneys General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).)

Statute(s) Implemented: **To the extent the following apply to farmers, growers/manufacturers of agricultural products, and persons performing horticultural services for farmers:**

- RCW 82.04.040—“Sale,” “casual sale”;
- RCW 82.04.050—“Sale at retail,” “retail sale”;
- RCW 82.04.060—“Sales at wholesale,” “wholesale sale”;
- RCW 82.04.070—“Gross proceeds of sales”;
- RCW 82.04.080—“Gross income of the business”;
- RCW 82.04.190—“Consumer”;
- RCW 82.04.213—“Agricultural product”—“Farmer”;
- RCW 82.04.220—Business and occupation tax imposed;
- RCW 82.04.250—Tax on retailers;
- RCW 82.04.260—Tax on . . . processors of various foods and by-products . . .;
- RCW 82.04.270—Tax on wholesalers, distributors;
- RCW 82.04.290—Tax on . . . other business or service activities;
- RCW 82.04.330—Exemptions—Farmers--Agriculture;
- RCW 82.04.337—Exemptions—Amounts received by hop growers or dealers for processed hops shipped outside the state;
- RCW 82.04.410—Exemptions—Hatching eggs and poultry;
- RCW 82.08.010—Definitions;
- RCW 82.08.020—Tax imposed—Retail sales . . .;
- RCW 82.08.0257—Exemptions—Auction sales of tangible personal property used in farming;
- RCW 82.08.0259—Exemptions—Sales of purebred livestock for breeding—Cattle and milk cows;
- RCW 82.08.0267—Exemptions—Sales of poultry for producing poultry and poultry products for sale;
- RCW 82.08.0272—Exemptions—Sales of semen for artificial insemination of livestock;
- RCW 82.08.0277—Exemptions—Sales of pollen;
- RCW 82.08.0288—Exemptions—Lease of certain irrigation equipment;
- RCW 82.08.0293—Exemptions—Sales of food products for human consumption;
- RCW 82.08.0296—Exemptions—Sales of feed consumed by livestock at a public livestock market;
- RCW 82.12.010—Definitions; and
- RCW 82.12.020—Use tax imposed.



Ancillary Documents (i.e., ETAs, PTBs, and ADs):

- **ETA 173.04.103—Seed furnished under grower contracts;**
- **ETA 190.04.210—Feeding and fattening cattle and the agricultural products exemption;**
- **ETA 237.08.125—Sales tax exemption for sales of cattle and milk cows;**
- **ETA 381.04.161—Wholesale sales of rye and milo;**
- **ETA 406.08.125—Sales of quarter horses; and**
- **AD 8122.1—Feed purchased by cattle auction businesses.**

Court Decisions:

- **Valley Fruit v. Department of Rev., 92 Wn. App. 413, 963 P.2d 886 (1998) —Controlled-atmosphere storage, washing, waxing, sorting, sizing, and packing of apples, does constitute "manufacturing."**

Board of Tax Appeals Decisions (BTAs):

- **Douglas Fruit Company vs. Department of Revenue—BTA 95-50-27—Controlled-atmosphere storage, washing, waxing, sorting, sizing, and packing of apples, does not constitute "manufacturing."**

Administrative Decisions (e.g., WTDs):

- **Det. No. 93-240, 13 WTD 369 (1994)—A feedlot that fattens its own cattle for longer than sixty days before selling them at wholesale is considered a farmer and may give its vendors resale certificates for its purchases of feed.**
- **93-035, 13 WTD 236 (1994)—Screenings of grain listed in RCW 82.04.260(1) qualify for the special lower B&O tax rate.**

Attorney General's Opinions (AGOs):

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Previous review documents for WAC 458-20-161, WAC 458-20-234, and ETA 381.04.161;**
- **ETA 099.08.122—Spray materials used in producing timber and the agricultural exemption (and previous review document);**
- **ETA 367.04.172—Clearing land and moving earth for commercial farmers (and previous review document);**
- **ETA 420.08.12.102-135—Seedlings used in reforestation programs (and previous review document); and**
- **ETA 487.04.172—Cleaning settling ponds as retail sales (and previous review document).**





**10. Review Recommendation:**

- ☐ Amend
- ☒ Repeal—**Rules 161 & 234**
- ☒ Leave as is—**Rules 122, 209, & 210**
- ☐ Begin the rule-making process for possible revision. (Applies only when the Department has received a petition to revise a rule.)
- ☐ Incorporate ancillary document into a new or existing rule. (Subject of this review must be an ancillary document and not a rule.)

**Explanation of recommendation:** (If recommending an amendment of an existing rule, provide only a brief summary of the changes you've identified/recommended earlier in this review document.)

**WAC 458-20-161 and 234 should be repealed because they are out of date and/or provide incorrect tax-reporting instructions because of subsequent legislation.**

**WAC 458-20-122, 209, & 210 should be retained in their current form at this time. Legislation related to the agricultural industry is anticipated in the 2001 legislative session.**

**11. Manager action:** Date: \_\_\_\_\_

☐ Reviewed recommendation      ☐ Accepted recommendation

☐ Returned for further action

Comments: